

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nina Mickens	Team: Team # 2	CCRB Case #: 200915072	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/16/2009 12:19 AM	Location of Incident: 5th Avenue and East 126th Street	Precinct: 28	18 Mo. SOL 3/16/2011	EO SOL 3/16/2011	
Date/Time CV Reported Fri, 09/25/2009 3:30 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 09/25/2009 3:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Landusky	16951	936908	PBMN TF
2. SGT Gregory Pekera	04870	919546	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Landusky	Abuse: PO Jason Landusky frisked § 87(2)(b)	
B.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera frisked § 87(2)(b)	
C.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera refused to provide his name and shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint via the CCRB on-line website on September 25, 2009 (encl. 7A-E).

On September 6, 2009, at approximately 12:19a.m., Sgt. Gregory Pekera and PO Jason Landusky stopped § 87(2)(b)'s vehicle on East 128th Street and Lexington Avenue in Manhattan for failure to signal. His friend, § 87(2)(b) § 87(2)(b) was the passenger of this vehicle. § 87(2)(b) was subsequently issued a summons for the aforementioned infraction. The following officer actions resulted:

- **Allegation A: Abuse of Authority: PO Jason Landusky frisked** § 87(2)(b)
- **Allegation B: Abuse of Authority: Sgt. Gregory Pekera frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation C: Abuse of Authority: Sgt. Gregory Pekera searched the car in which** § 87(2)(b) **and** § 87(2)(b) **were occupants.** § 87(2)(g)
- **Allegation D: Abuse of Authority: Sgt. Gregory Pekera refused to provide his name and shield number to** § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- 6'0" tall, 313 pounds with black hair and brown eyes.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 7, 2009 (encl. 9A-D). § 87(2)(g) On September 16, 2009, at approximately 12:19a.m., § 87(2)(b) was driving his white 1997 Nissan Maxima to drop off his friend, § 87(2)(b) at his home in Manhattan. § 87(2)(b) was wearing a black t-shirt and jeans. § 87(2)(b) wore a flannel shirt and jeans. They just came from Popeye's food chain and were driving on East 124th Street and Lexington Avenue. § 87(2)(b) could not make a left onto East 125th Street so he continued up to East 128th Street. Through the rearview mirror, § 87(2)(b) could see an unmarked black car with flashing lights following closely behind his car. § 87(2)(b) made a turn and then heard a siren. He stopped his car on Fifth Avenue just beyond East 126th Street. § 87(2)(b) put the car in park.

Two officers approached the car. PO1, the driver, was a white male, 5'8' tall, with short blond hair, blue eyes and identified as PO Jason Landusky. PO2 was 5'11" tall with dark brown hair and identified via investigation as Sgt. Gregory Pekera. Both officers were in plainclothes. PO Landusky approached the driver's side of § 87(2)(b)'s car and asked where they were going. Both windows were rolled down. § 87(2)(b) had a messenger bag in the back seat but there were no other bags in the car. § 87(2)(b) responded that he was going "nowhere" and if there was problem. He provided his license, registration and insurance upon request. § 87(2)(b)

§ 87(2)(b) told PO Landusky that he lived in the Bronx and § 87(2)(b) stated that he lived on § 87(2)(b). § 87(2)(b) provided his ID to Sgt. Pekera. PO Landusky questioned if there were any drugs in the car, which § 87(2)(b) and § 87(2)(b) denied.

§ 87(2)(b) and § 87(2)(b) did not make any movements in the car and listened to the officers. Sgt. Pekera asked both men if they had any bags of weed or coke and said that no one is going to jail for a “bullshit” bag of weed or coke. PO Landusky asked what the problem was and if there were guns, knives or weapons. Both officers asked the questions several times. PO Landusky asked if they were to search the car, would they find anything that would hurt them. Both men said no. § 87(2)(b) then asked, “Don’t you need a warrant to search the car?” Sgt. Pekera said that they watched too much television. PO Landusky told them they were going to come out of the car one way or the other. § 87(2)(b) told the officers that if they wanted to search the car they should search it.

Both men were ordered out of the vehicle. PO Landusky frisked § 87(2)(b) and Sgt. Pekera frisked § 87(2)(b). PO Landusky escorted § 87(2)(b) to the rear of the vehicle, told him to relax and asked what he did for a living. § 87(2)(b) answered that he was unemployed, just finished school and was expecting a baby. Sgt. Pekera entered the front passenger side and began to search the car. Sgt. Pekera then went into the rear passenger’s seat. § 87(2)(b) could not see what Sgt. Pekera was doing while inside of the car. PO Landusky went to the car but § 87(2)(b) did not know if he entered it or not. PO Landusky asked § 87(2)(b) about his tattoos, asked where he worked and if they were in a gang.

Both officers then instructed the civilians to return to their car. § 87(2)(b) noticed that his cup holder inside of his car was broken. One of the officers used § 87(2)(b)’s car key to open the trunk. § 87(2)(b) assumed the car key was removed sometime during the car search. Both officers searched inside the trunk. The officers returned to where § 87(2)(b) and § 87(2)(b) were seated. PO Landusky said that everything was fine. Given that the officers were leaning into the car windows, § 87(2)(b) requested their names and shield numbers. PO Landusky looked over to Sgt. Pekera and then went to their car for ten minutes. PO Landusky then returned with summons #§ 87(2)(b) for failing to signal within 100 feet. The 28th Precinct was noted as the area of occurrence. PO Landusky said that his information was on the ticket. § 87(2)(b) asked the officers what precinct they were from and Sgt. Pekera said the 25th Precinct. Both officers started laughing and walked away. The duration of the stop was 27 minutes. After the incident, § 87(2)(b) checked his trunk. The panel where his tire jack is was ripped off.

Attempts to Contact Civilians

Between October 1, 2009 and October 9, 2009, three phone calls, two emails and one letter was sent to § 87(2)(b). He has not responded to any of these attempts.

NYPD Statement(s):

Subject Officer: SERGEANT GREGORY PEKERA

- 5'9" tall, 173 pounds with brown hair and brown eyes
- Worked a tour of 6:00p.m to 2:00a.m., the following day. He acquired overtime until 5:00 a.m. His assignment was Auto Larceny duties which consisted of patrol and running license plates. Sgt. Pekera was partnered with PO Landusky. Both officers were dressed in a golf shirt style uniform, and assigned to a blue unmarked car. PO Landusky was the driver.

Memo book:

At 12:45a.m, car stop at East 126th Street and Park Avenue. Two stop and frisk reports were prepared. A summons was issued to the operator, license plate # § 87(2)(b)

CCRB Testimony

Sgt. Pekera was interviewed at the CCRB on December 23, 2009 (encl. 11A-D). On September 16, 2009, at approximately 12:45a.m., PO Landusky and Sgt. Pekera were on patrol when they noticed that the car in front of them failed to signal as it turned onto East 126th Street. PO Landusky made the observation and stopped the car via lights and sirens. Sgt. Pekera observed that the right front passenger, § 87(2)(b) made several furtive movements to the left, the back seat and dipped forward to the point where he was no longer visible. § 87(2)(b) looked as if he leaned towards the driver, or stretched. Sgt. Pekera could not see § 87(2)(b)'s hands and could not tell if he reached for anything. Sgt. Pekera did not take his eyes off of § 87(2)(b) so he could not say whether the driver, § 87(2)(b) also made furtive movements. PO Landusky did not mention whether he saw § 87(2)(b) moving or not.

PO Landusky approached the driver's side and Sgt. Pekera approached the passenger's side. The windows of the vehicle were rolled down. § 87(2)(b) did not make any additional movements. Sgt. Pekera asked § 87(2)(b) how he was doing and where he was headed. § 87(2)(b) did not look at Sgt. Pekera and kept his eyes forward. Sgt. Pekera was not sure if § 87(2)(b) ever replied and he did not ask for ID. PO Landusky asked § 87(2)(b) for his license and registration and what they were doing that night. § 87(2)(b) took a while to respond and a couple of times the civilians would look at each other before § 87(2)(b) would answer. Sgt. Pekera thought the men were trying to get each other's approval. The civilians never spoke with each other during the stop. Sgt. Pekera did not ask either occupant if they had drugs or weapons in the car. PO Landusky asked § 87(2)(b) about marijuana. Sgt. Pekera did not have a reason to believe that marijuana was in the car and did not know what PO Landusky observed. Sgt. Pekera did not hear PO Landusky say that no one was going to jail for a "bull shit" bag of weed.

§ 87(2)(b) was breathing heavy, did not want to make eye contact and appeared nervous. From experience, people who behave that way have committed a crime. Sgt. Pekera had his flashlight out and did not see anything in plain view. At one point when § 87(2)(b) turned towards § 87(2)(b) Sgt. Pekera was able to look down near § 87(2)(b)'s waist and observed a bulge on the waistband under his jacket. There was no definitive shape of the object and it was big enough that it could be a firearm. PO Landusky asked § 87(2)(b) to step out of the vehicle. Later on he told Sgt. Pekera that he did this because § 87(2)(b) acted nervous and was evasive. Sgt. Pekera feared for his safety. He asked § 87(2)(b) to step out to investigate the bulge. Sgt. Pekera frisked § 87(2)(b) § 87(2)(b) stated the object was a cell phone. Sgt. Pekera lifted the shirt and confirmed it was a phone.

PO Landusky frisked § 87(2)(b) but did not tell Sgt. Pekera why or whether he observed a bulge. Sgt. Pekera searched the car alone, going under the front seats and anywhere the passenger may have tried to place or hide something. He lifted up the floor mats, opened the

center console between the driver and passenger's seat, opened the glove compartment and checked the rear seats of the vehicle. Sgt. Pekera did not damage any part of the car and did not have trouble opening the compartments. Sgt. Pekera could not recall if there were any bags in the car at the time. No contraband or weapons were found.

After 10-15 minutes, the officers walked the occupants back to their respective seats. Sgt. Pekera did not search the trunk of the car. The officers returned to their vehicle where PO Landusky issued a summons to § 87(2)(b). Sgt. Pekera did not hear § 87(2)(b) ask for the officers' names and shield numbers. However, he heard PO Landusky tell the male that all his information was on the summons. The stop, question and frisk reports prepared by PO Landusky were shown to Sgt. Pekera. It was noted that the occupants had evasive or false responses to questions. Sgt. Pekera stated that their responses did not come out natural and seemed manufactured.

Subject Officer: POLICE OFFICER JASON LANDUSKY

- § 87(2)(b) -old white male, 5'7" tall, 190 pounds, brown hair and blue eyes
- Worked a tour of 5:30 p.m. to 2:05 a.m. the following day. He was assigned to Manhattan North Auto Larceny duties with Sgt. Gregory Pekera. His primary responsibility was routine patrol and enforcement. Both officers were dressed in uniform, an NYPD short sleeved bike shirt and assigned to an unmarked blue Crown Victoria. PO Landusky was the operator.

Memo book:

At 12:45a.m., a car stop was conducted at East 126th Street and Park Avenue for failure to signal southbound on Park onto East 126th at least 100 feet prior. Driver made late signal while turning. Excessive movement by passenger on approach. Both occupants appeared extremely nervous and acting evasive during questioning. Two stop and frisk reports were issued: § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) for violating VTL 1163B issued to § 87(2)(b) § 87(2)(b) NY.

CCRB Testimony

PO Landusky was interviewed at the CCRB on December 16, 2009 (encl. 10A-E). § 87(2)(b) § 87(2)(b) PO Landusky looked around the vehicle and did not see any weapons or contraband in plain view. He did not see any suspicious bulges on the occupants of the car while they were seated. He asked if there were any weapons or drugs in the car. After ten seconds, both occupants said there were none. PO Landusky asked the males why they were acting so nervous and asked if they were in possession of a bag of weed. PO Landusky may have said to § 87(2)(b) that no one is going to jail for a "bullshit" bag of weed. He has made this statement before when dealing with a nervous occupant of a car. The men were frisked to make sure that they did not have any weapons. PO Landusky frisked § 87(2)(b) while Sgt. Pekera searched § 87(2)(b).

Sgt. Pekera searched the vehicle. PO Landusky could not recall if the trunk was searched or damaged. PO Landusky went to his car, completed the summons for no signal and then issued the summons. After § 87(2)(b) was issued a summons, he requested PO Landusky's name and shield number. § 87(2)(b) did not ask what command the officers were from. PO Landusky could not remember if § 87(2)(b) requested this information from both officers. PO Landusky told § 87(2)(b) that all of the information was on the bottom of the summons. PO Landusky prepared a stop and frisk report for both males and submitted it to his command.

NYPD Document(s)

Summons

- PO Landusky issued a summons to § 87(2)(b) for failure to signal. It noted that he failed to signal from a distance of 100 feet ahead (encl. 12).

Stop Question and Frisk Report

- A stop, question and frisk report was prepared for both § 87(2)(b) and § 87(2)(b) by PO Landusky (encl. 13A-B). They were suspected of criminal possession of a weapon. The report notes that the circumstances that led to the stop were furtive movements. A photo ID was provided and both civilians were explained the reason for the stop. Both civilians were frisked due to furtive movement but not searched. No weapons or contraband were recovered. Other circumstances/factors were noted as “area has high incidence of reported offense of type under investigation” and “evasive, false or inconsistent response to officer’s questions.”

Summons for Incident and Disposition

- § 87(2)(g)

Status of Civil Proceedings

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of February 4, 2010 with regard to the incident (encl. 14).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 5 and 6).

Subject Officer(s) CCRB History

- PO Landusky has been a member of the service for 5 years and there are no substantiated CCRB allegations against him (encl. 3).
- Sgt. Pekera has been a member of the service for 12 and there are 3 substantiated CCRB allegations against him. In case number 200701549, Sgt. Pekera received charges for a vehicle search, property damage and frisk allegations. The NYPD closed these allegations as decline to prosecution and no disciplinary action was recommended. However, the board did recommend charges for a search of person in which the NYPD imposed a penalty of Command Discipline A. (encl. 4A-B).

Conclusion

Identification of Subject Officer(s)

- PO Landusky acknowledged that he interacted with § 87(2)(b) and § 87(2)(b)
- Sgt. Pekera acknowledged that he interacted with § 87(2)(b) and § 87(2)(b)

Allegations Not Pleaded

- § 87(2)(g)

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Investigative Findings and Recommendations

Allegation A: Abuse of Authority: PO Jason Landusky frisked § 87(2)(b)

Allegation B: Abuse of Authority: Sgt. Gregory Pekera frisked § 87(2)(b)

§ 87(2)(b) stated that both he and § 87(2)(b) were ordered out of the vehicle and frisked. § 87(2)(b) did not state that he or § 87(2)(b) made any movements in the vehicle that would have drawn the attention to the officers or appear as if they were reaching for a weapon. § 87(2)(g) Sgt. Pekera stated that as the car was being pulled over, he observed § 87(2)(b) making furtive movements consisting of dipping down and going out of view of the officers. When he approached the vehicle, he observed a bulge on § 87(2)(b)'s waist big enough fit a weapon. PO Landusky stated that both civilians appeared nervous during the car stop and thus were frisked for possible weapons. According to the NYS Court of Appeals: DeBour, 211 (encl. 1), officers must have, "reasonable suspicion that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor" in order to, "stop the subject...and detain him while an expeditious investigation is conducted to determine if there is probable cause to arrest the subject." § 87(2)(g)

[REDACTED]

[REDACTED]

Allegation C: Abuse of Authority: Sgt. Gregory Pekera searched the car in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

There is no dispute that the vehicle was searched. § 87(2)(g)

§ 87(2)(b) stated that following the frisk, Sgt. Pekera entered the vehicle and searched the inside of the car. Sgt. Pekera confirmed that he searched the vehicle consisting of under the front seats and anywhere the passenger may have tried to place or hide something. He lifted up the floor mats, opened the center console between the driver and passenger's seat, opened the glove compartment and checked the rear seats of the vehicle. According to People v. Carvey, 89 N.Y. 2d 707, 680 in which the circumstances leading to the vehicle searches that took place are analogous to this case, the courts found that the searches were lawful (encl. 2A-D). The court stated that when coupled with the police observation of defendant furtively placing something beneath this seat, warranted the conclusion that a weapon located in the vehicle presented an actual and specific threat to the officers' safety. In these particular circumstances, the officers could lawfully reach into the vehicle, even after removing the driver and passengers (encl. 2A-D). § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D: Abuse of Authority: Sgt. Gregory Pekera refused to provide his name and shield number to § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] alleged that at the end of the car stop, § 87(2)(b) [REDACTED] requested the officers' names and shield numbers. § 87(2)(b) [REDACTED] did confirm that PO Landusky stated that his information was on the summons that was subsequently issued, but that Sgt. Pekera solely provided the precinct he worked out of and not the aforementioned information. Sgt. Pekera denied hearing a request for his name but recalled that PO Landusky stated his information was on the summons. PO Landusky could not recall if Sgt. Pekera's name and shield were requested but did state that his own name and shield were requested and provided. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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Reviewer: _____
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